DOCKET FILE COPY ORIGINAL

RECEIVED

OCT 1 1 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act	)	CC Docket No. 93-22

AT&T COMMENTS

Mark C. Rosenblum
Robert J. McKee
Judy Sello

Room 2255F2
295 North Maple Avenue
Basking Ridge, New Jersey 07920
(908) 221-8984

Its Attorneys

October 11, 1994

No. of Copies rec'd 0+9
List A B C D E

TABLE OF CONTENTS

SUMMARY

AT&T supports the Commission's initiative to protect telephone subscribers from fraudulent and deceptive practices used by some information providers ("IPs"). The proposed rules, however, should be modified or clarified to avoid unnecessarily impairing consumer flexibility in using and paying for information services. To minimize burdens on common carriers and IPs and to tailor the new rules to the identified problem, the Commission should confine the scope of the new requirements to information services provided via 800 numbers -- where customers have a legitimate expectation that the call will be "toll-free" and where the FNPRM indicates abuses may be occurring.

AT&T supports the Commission's proposal to prohibit IPs and carriers from transferring 800 callers to "any information service" unless a valid presubscription or comparable arrangement exists. However, because of limitations on a carrier's ability to make such determinations on a real-time basis, AT&T recommends that the proposed rule be clarified to prohibit transfer of 800 calls "where technically feasible" and "where the carrier knows or should know that prohibited behavior is or would be occurring." The Commission should require carriers to investigate complaints and to initiate termination of the customer's 800 service if the customer is not in compliance with TDDRA or the Commission's rules.

The Commission should not exclude telephone calling cards as a permissible means of paying for IP services. The proposed restriction could unnecessarily hamper the provision of information services which consumers may want to charge to their carrier-issued telephone calling cards. A caller's use of a telephone calling card or a commercial credit card constitutes the same sort of assent by the calling party to accept charges that presubscription or comparable arrangements represent. Thus, there is no basis for barring the use of carrier-issued calling cards.

The Commission's proposal to prohibit common carriers from billing for presubscribed information services without evidence of a written presubscription agreement is overbroad and would impose unnecessary burdens on carriers. To avoid these unintended consequences, the requirement of a written presubscription agreement should be applied only to IP services provided via 800 numbers (and not charged to a credit or calling card). Moreover, carriers should not be required to review individual presubscription agreements. Rather, IPs should be permitted to certify to the billing carrier that a written agreement exists and to produce the agreement in the event of dispute.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act	)	CC Docket No. 93-22

AT&T COMMENTS

Pursuant to Section 1.415 of the Commission's Rules, 47 C.F.R. § 1.415, AT&T Corp. ("AT&T") hereby comments on the Commission's FNPRM in this proceeding, which proposes to adopt more stringent requirements "to give telephone subscribers greater protection from fraudulent and deceptive practices associated with the use of 800 numbers to provide information services."[1]

BACKGROUND

AT&T supports the Commission's initiative to protect 800 callers from abusive practices in connection

1 Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, CC Docket No. 93-22, Order on Reconsideration and Further Notice of Proposed Rulemaking, FCC 94-200, released August 31, 1994, ¶ 1 ("Reconsideration Order" and "FNPRM").

with "information services," just as it endorsed the Commission's earlier efforts to control such practices in connection with pay-per-call services, both in regulations implementing Title I of the Telephone Disclosure and Dispute Resolution Act ("TDDRA")[2] and in proceedings culminating in the 900 Services Order.[3] Some of the proposed rules, however, require modification or clarification to avoid impairing consumer flexibility in accessing information services, and to reflect the practical limitations under which common carriers providing transmission, assigning telephone numbers to information providers ("IPs") and, in some instances, also billing for information services operate.

As the Commission points out, "TDDRA generally prohibits the use of 800 numbers to provide services for which callers are assessed charges."[4] However, even under

---

[2] Pub. L. 102-556, codified at 47 U.S.C. § 228; see AT&T Comments, filed April 19, 1993, and AT&T Reply Comments, filed May 4, 1993, in Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, CC Docket No. 93-22 and RM-7990, Notice of Proposed Rulemaking and Notice of Inquiry, 8 FCC Rcd. 2331 (1993).

[3] See AT&T Comments, filed April 24, 1991, and AT&T Reply Comments, filed May 24, 1991, in Policies and Rules Concerning Interstate 900 Telecommunications Services, Report and Order, 6 FCC Rcd. 6166 (1991) ("900 Services Order"), recon., 8 FCC Rcd. 2343 (1993).

[4] FNPRM, n.28.

the statute and the Commission's rules "such use is permissible when callers to an 800 [number] either have a preexisting agreement that authorizes assessment of charges or [when they] pay for the transaction with a credit or charge card. 47 U.S.C. § 228(c)(6)."[5]

The Commission's rules implementing TDDRA already prohibit establishment of a presubscription arrangement "during the course of a call for which information charges are assessed, unless fees are charged to a credit or charge card."[6] This is intended to prevent IPs "from being able instantly to 'presubscribe' casual callers who had not received the basic information they would need to make

---

[5] Id. The current requirements for a valid "presubscription or comparable arrangement" include: disclosure by the IP of all material terms and conditions of service, agreement to notify the consumer of future rate changes, assent by the consumer to the terms of service, and use of an ID number or other means to prevent unauthorized access by nonsubscribers. Disclosure of a credit or charge card, with authorization to bill that number during the course of a call, also constitutes a valid presubscription or comparable arrangement (if the card is subject to the dispute resolution procedures of the Truth in Lending Act and Fair Credit Billing Act, as amended, 15 U.S.C. § 1601, et seq.) ("TILA" and "FCBA"), but no other action taken during the call can create such an arrangement. See Section 64.1501(b)(5) (see Reconsideration Order, Appendix B) (formerly § 64.1501(b)(2)).

[6] FNPRM, ¶ 24; see 47 C.F.R. § 64.1501(b), (b)(1) and (2) (1993), redesignated as § 64.1501(a)(4) and (b)(1)-(5) by Reconsideration Order, Appendix B ("Appendix B").

informed choices or had not actually agreed to accept service on the terms offered."[7]

The Commission notes that, despite these requirements, "[c]omplaints . . . indicate that many telephone subscribers' monthly telephone bills include charges for information services provided over 800 numbers when the subscriber never entered into a presubscription arrangement as defined by our rules."[8] As the Reconsideration Order (¶ 18) notes, IPs that have not established valid presubscription arrangements with a caller apparently read the Automatic Number Identification ("ANI") of the originating telephone line and bill charges to that number, without having determined that the caller is the subscriber and is legally capable of entering into a contract.[9] To address this problem, the FNPRM proposes to "adopt more stringent requirements to control the circumstances under which valid presubscription

---

[7] FNPRM, ¶ 24.

[8] FNPRM, ¶ 25 (citation omitted).

[9] As the Commission has indicated, use of ANI in this manner "does not establish a legitimate presubscription arrangement" and thus is already prohibited. See Reconsideration Order, ¶¶ 18-19 and n.23, citing Letter from Gregory A. Weiss, Acting Chief, Enforcement Division, Common Carrier Bureau, to Randall R. Collett, Executive Vice President, Association of College and University Telecommunications Administrators, 9 FCC Rcd. 2819 (1994).

arrangements are created and common carriers can transmit or bill for services covered by these arrangements."[10]

AT&T strongly supports the Commission's efforts to deter deceptive practices associated with the use of 800 numbers to provide information services. Indeed, AT&T has been in the forefront in protecting consumers against abusive practices over 800 Service, for example, by adopting tariff provisions that require AT&T to terminate immediately a customer's 800 Service for violation of the Commission's pay-per-call rules or identified fraud statutes or rules.[11]

As the Commission correctly recognizes, however, the proposed rules will impose new burdens on all common carriers and IPs -- the vast majority of whom have not engaged in any abuses.[12] In addition, they may inappropriately restrict options available to consumers in using and paying for information services. To minimize such burdens and to tailor the solution to the identified problem, the Commission should confine the scope of any new requirements to IP services accessed via 800 numbers -- where customers have a legitimate expectation that the call

---

[10] FNPRM, ¶ 27.

[11] See AT&T Tariff F.C.C. No. 2, Section 2.8.4, effective July 28, 1994; FNPRM, n.32.

[12] FNPRM, ¶ 30.

will be "toll-free" and where the FNPRM notes that abuses may be occurring. Moreover, the Commission should ensure that the rules do not impose an unreasonable burden on the legitimate use of 800 numbers for the provision of information services. With these considerations in mind, AT&T offers the following specific comments on the Commission's proposals.

I. THE PROHIBITION ON TRANSFER OF 800 CALLS TO ANY INFORMATION SERVICE SHOULD BE LIMITED TO SITUATIONS IN WHICH IT IS TECHNICALLY FEASIBLE.

The Commission proposes to expressly prohibit IPs and carriers from transferring callers to 800 numbers to any information service (regardless of its numbering prefix), unless a valid presubscription or comparable arrangement exists.[13] AT&T generally supports the Commission's proposal, and has already taken steps to preclude such transfers; AT&T currently blocks the entire 900 NPA in its 800 Service provisioning system, making the issuance of an order for an 800 number with a 900 POTS translation impossible. However, there are definite limitations on a carrier's ability to enforce the Commission's restriction, either as part of the 800 Service provisioning process or the subsequent transfer of the caller by the 800 subscriber.

---

[13] FNPRM, ¶ 28, Section 64.1504(b)(proposed).

AT&T is unaware of any system that would permit it to implement a provisioning restriction to screen all information services.[14] Moreover, once the call to the 800 number is completed, AT&T could not restrict (through a network solution) the 800 customer's ability to transfer the call through premises equipment.[15] In any case, at the time of call connection, the carrier (as opposed to the IP) would not know if in fact the caller had a valid presubscription or comparable arrangement with the IP, such that charging for information conveyed during the call would be permissible even though it was initiated via an 800 number.

For these reasons, AT&T recommends that the proposed rule be clarified to require carriers to prohibit the transfer of 800 calls to an information service only "where technically feasible" and where the carrier "knows

---

[14] To implement such a restriction, AT&T would need to (1) create a data base which had the capacity to store and cross-match the numbers of all non-900-based information services, (2) implement processes to ensure that the system was continually updated with all such numbers, and (3) perform 10-digit screening on all 800/POTS translations. Development of such a system would require considerable time, would be extremely costly, and would be virtually impossible to accurately update.

[15] For example, AT&T has no network capability to prevent an 800 customer from transferring a call to another number (including a 900 number), once the 800 call is connected.

or reasonably should know that prohibited behavior is or would be occurring."[16] The Commission should require carriers to investigate complaints that 800 subscribers are transferring callers to "any information service" (a term which the Commission needs to define explicitly) in the absence of "presubscription or comparable arrangement" and initiate termination of the customer's 800 service if not in compliance with TDDRA or the Commission's rules.[17] This would be consistent with a carrier's obligations concerning 900 pay-per-call services, which do not require carriers to actively police IP compliance, but only obligate the

---

[16] The Commission also notes that some IPs may be using direct-dialed international telephone numbers to offer their information services, and that they sometimes offer initial access to such services via an 800 number. FNPRM, ¶ 27 and n.36. As the Commission recognizes, these international information services do not fall within the statutory definition of "pay-per-call services" or federal regulations governing same, because they are charged at the basic tariffed rate for international calls (rather than at a premium rate). It is unclear whether the FNPRM is seeking to impose any carrier obligations with respect to such services, for example, through the proposed prohibition on transfer of 800 calls to "any . . . information service." Thus, the Commission should clarify whether it intends to cover such offerings, and, if so, define explicitly the term "information service." In all events, because common carriers may not be able to distinguish international information services from other international calls, AT&T's suggested revisions to the FCC's proposed Section 64.1504(b) should apply to these international offerings, if they are to be covered by the rule.

[17] See FNPRM, n.32; 47 C.F.R. § 64.1503.

carrier to terminate the IP's service when it becomes aware of a service offered in violation of TDDRA or implementing regulations, and to investigate an IP's service when the carrier receives a report which would cause a reasonable person to question the lawfulness of a specific program.[18]

II. CARRIER-ISSUED TELEPHONE CALLING CARDS SHOULD NOT BE EXCLUDED FROM THE TYPES OF CREDIT OR CHARGE CARDS THAT OTHERWISE QUALIFY AS A VALID PRESUBSCRIPTION OR COMPARABLE ARRANGEMENT.

The Commission also proposes to modify the definition of "presubscription or comparable arrangement" in Section 64.1501(b) to require that "such arrangements be established only with a legally competent individual and executed in writing, unless charges are authorized to a credit or charge card generally accepted for the purchase of consumer goods, entertainment, travel and lodging."[19] As

---

[18] Policies and Rules Implementing the Telephone Disclosure and Dispute Resolution Act, Report and Order, 8 FCC Rcd. 6885, 6889 (¶ 23)(1993) ("Report and Order").

[19] FNPRM, ¶ 29, Section 64.1501(b)(proposed). According to the Commission, this "would prevent IPs from creating instant 'presubscription' by immediately issuing to a caller either a PIN or a 'credit' card that is billed on a monthly telephone bill and usable for purchasing information services from the particular IP." Id. By proposing to generally redefine the term "presubscription or comparable arrangement," the Commission would require written presubscription agreements for all presubscribed information services, even when an IP's services are not accessed through an 800 number. Given that the FNPRM cites no evidence of current abuse regarding presubscription arrangements over 900 and other non-800 numbers, there is no basis

(footnote continued on following page)

presently worded, this rule would unduly hamper the efficient provision of information services which consumers may want to charge to carrier-issued telephone calling cards.[20]

The Commission should not redefine the credit or charge card exception so as to exclude calling cards as a permissible means of paying for IP services. This would significantly impair the use of calling cards for information services -- despite the fact that many individuals may prefer to employ their calling card for this purpose, even if they possess a commercial credit card (which not all individuals do).[21]

(footnote continued from previous page)

for imposing such a requirement on these other services. See also p. 13, n.26, infra. As discussed more fully in Section III infra, AT&T agrees that presubscription agreements should be in writing for IP services accessed via 800 numbers.

[20] In addition, if any aspect of this proposal is adopted, the modified definition should only apply to information services accessed via calls to 800 numbers and covered by Section 64.1504. Currently, AT&T does not allow use of calling cards for payment of 900 Services, but it has been investigating the feasibility of this option, which it believes customers would find useful.

[21] The AT&T Calling Card (unlike a typical commercial credit card) is generally available without regard to income level. It does not carry interest charges for delayed payment and thus offers substantial advantages to consumers who defer payment of their commercial credit card charges. In addition calling cards, such as AT&T's True Choice (or Vanity Card), allow customers to employ familiar digits (such as their name) in entering

(footnote continued on following page)

First, inputting by the caller of a credit card number -- whether it be a telephone calling card or a commercial credit card -- constitutes assent by the calling party to charge his or her account. This thus serves to avoid altogether the problem identified by the Commission (and already prohibited) where carriers are billing information service charges to the subscriber of the originating line based solely on capturing that line's ANI.[22] Second, there is also no reason to believe that callers are not equally aware that disclosure to an IP of either a commercial credit card <u>or</u> a calling card will result in billing of charges. In all events, like commercial credit cards, carrier-issued calling cards (when used to purchase information services) are subject to the protections of the Truth in Lending and Fair Credit Billing

---

(footnote continued from previous page)

their card number over a touchtone phone. This makes use of the card much more convenient and avoids the need to display the card in a busy location (where bystanders could memorize the numbers and make unauthorized calls).

[22] <u>See</u>, p. 4, n.9, <u>supra</u>. AT&T realizes that some entities may be abusing the Commission's rules and issuing calling cards based on ANI capture without ascertaining that the caller is the subscriber to the originating line or has authority to direct billing of charges to that telephone number. Strict enforcement of the rules should eradicate this problem, without denying callers the flexibility and convenience of using duly-issued telephone calling cards that do not employ this prohibited practice.

Acts.[23] Thus, there is no basis for excluding such calling cards from those constituting a "valid presubscription or comparable arrangement."

III. A WRITTEN PRESUBSCRIPTION AGREEMENT SHOULD BE REQUIRED FOR PRESUBSCRIBED INFORMATION SERVICES ACCESSED VIA 800 NUMBERS, BUT BILLING CARRIERS SHOULD NOT BE REQUIRED TO OBTAIN DIRECT EVIDENCE OF EACH SUCH AGREEMENT.

The Commission further proposes to "prohibit common carriers from billing subscribers for presubscribed information services without evidence of the written agreement" and would require carriers "to address bills assessing presubscribed information services charges only to the individual who entered into the presubscription agreement."[24]

The proposed rule is overly broad and would impose unnecessary burdens on carriers performing billing for presubscribed information services. To avoid these unintended consequences, the rule should be revised so as to apply only to presubscribed information services provided over 800 numbers (and not billed to a credit or charge card subject to TILA and FCBA);[25] for these 800 services, a written presubscription agreement with the

---

[23] See Report and Order, 8 FCC Rcd. at 6887-88, n.25.

[24] FNPRM, ¶ 29, Section 64.1510(b)(1)(proposed).

[25] See FNPRM, ¶ 29.

party to be billed for the IP's charges is appropriate, given the expectation that calls to 800 will be toll-free and the inability of line subscribers to protect themselves from unauthorized charges by blocking the entire 800 NPA (without also sacrificing access to a host of useful toll-free service).[26]

Moreover, although a written agreement should be mandated for presubscribed 800 information services, it would be unduly burdensome to require billing carriers to obtain direct evidence of each such agreement between the IP and the party to be billed. Rather, IPs should be required to certify to the billing carrier that the requisite written agreement exists and to produce the agreement, if a customer disputes billing of the IP's charges. This serves the purpose of having conclusive

---

[26] As AT&T has previously indicated, it is not necessary to have written presubscription agreements to ensure that callers have adequate prior disclosure and elect to incur charges for an information service. See AT&T Reply Comments, May 4, 1993, pp. 3-4; Policies and Rules Concerning Changing Long Distance Carriers, 7 FCC Rcd. 1038 (1992) (where the Commission explicitly recognized, in an analogous context, that customers may validly designate their presubscription to a primary interexchange carrier through verbal, non-written means). Moreover, as to presubscribed information services provided over 900 numbers, telephone subscribers can fully protect themselves from unauthorized billing of IP charges by requesting the LEC to block access from their telephone line(s) to the 900 service access code. See FNPRM, ¶ 29.

written evidence in the event of a dispute, yet spares carriers the administrative burden of reviewing and maintaining presubscription agreements in the vast majority of cases when there is no dispute.

AT&T agrees that carriers billing for presubscribed 800 services should be required to bill the individual who entered into the presubscription agreement.[27] With respect to charges made to a calling card (which should continue to be deemed a valid "presubscription or comparable arrangement" for the reasons stated in Section II above), this requirement should be interpreted as requiring billing in accordance with the billing instructions associated with the calling card.[28]

---

[27] AT&T 900 Service is currently used for a handful of presubscribed services that are billed to the originating station. There have been no complaints about these services, and thus, it would be inappropriate to restrict these offerings.

[28] For example, if a household consisting of individuals A and B have established AT&T calling card billing directing that all charges on their calling card(s) be billed to their residence telephone number (which is registered to A), then disclosure by B of that calling card number to an IP and billing of the IP charges to that telephone number would satisfy this requirement. This is appropriate because B is an authorized user of the calling card, and A and B have directed billing of calling card charges to that telephone number.

CONCLUSION

For the reasons stated above, the Commission's proposed regulations to protect consumers from abusive practices associated with the use of 800 numbers to provide information services should be modified or clarified as described herein.

Respectfully submitted,

AT&T CORP.

By Mark C. Rosenblum/ji

Mark C. Rosenblum
Robert J. McKee
Judy Sello

Room 2255F2
295 North Maple Avenue
Basking Ridge, New Jersey 07920
(908) 221-8984

Its Attorneys

October 11, 1994